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7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 JESUS MARTINEZ MENDOZA,
JAVIER CABRERA, AURELIANO
12 FLORES,

13 Plaintiffs,

14 vs.

15 JOHN W. VOJTECH, CBC FRAMING,
INC., A CALIFORNIA
16 CORPORATION AND DOES 1-10,

17 Defendant.
18
19

CASE NO.: C08 01675 HRL

**DEFENDANT CBC FRAMING,
INC.'S ANSWER TO
PLAINTIFFS' UNVERIFIED
COMPLAINT FOR DAMAGES;
DEMAND FOR JURY TRIAL**

20 COMES NOW Defendant CBC FRAMING, INC. ("Defendant"), answering
21 for itself and no other party to Plaintiffs JESUS MARTINEZ MENDOZA,
22 JAVIER CABRERA, and AURELIANO FLORES's ("Plaintiff") Complaint for
23 Damages (the "Complaint") as follows:

24 **NATURE OF CLAIM**

25 Answering this initial paragraph, Defendant denies that Plaintiffs are owed
26 overtime under either the Fair Labor Standards Act or the California Wage Orders
27 and statutes, or that it is liable for any unpaid wages, damages, liquidated
28 damages, penalties, attorneys' fees, costs, prejudgment interest and/or restitution

DEFENDANT CBC FRAMING, INC.'S ANSWER TO PLAINTIFFS'
UNVERIFIED COMPLAINT FOR DAMAGES; DEMAND FOR JURY TRIAL

1 to Plaintiffs. Except as expressly alleged herein, Defendant lacks sufficient
2 information and belief to admit or deny the remaining allegations contained in this
3 paragraph, and on that basis, denies both generally and specifically the allegations
4 contained in said paragraph.

5 PARTIES

6 1. Answering paragraph 1 of the Complaint, Defendant lacks sufficient
7 information and belief to admit or deny the allegations contained in paragraph 1,
8 and on that basis, denies both generally and specifically the allegations contained
9 in said paragraph.

10 2. Answering paragraph 2 of the Complaint, Defendant lacks sufficient
11 information and belief to admit or deny the allegations contained in paragraph 1,
12 and on that basis, denies both generally and specifically the allegations contained
13 in said paragraph.

14 3. Answering paragraph 3 of the Complaint, Defendant lacks sufficient
15 information and belief to admit or deny the allegations contained in paragraph 1,
16 and on that basis, denies both generally and specifically the allegations contained
17 in said paragraph.

18 4. Answering paragraph 4 of the Complaint, Defendant alleges that it is
19 a California corporation with offices in Canoga Park, California. Except as
20 expressly alleged herein, Defendant lacks sufficient information and belief to
21 admit or deny the remaining allegations contained in said paragraph, and on that
22 basis, denies both generally and specifically the allegations contained in said
23 paragraph.

24 5. Answering paragraph 5 of the Complaint, Defendant alleges that
25 Defendant John J. Vojtech is President of CBC Framing, Inc. Except as expressly
26 alleged herein, Defendant lacks sufficient information and belief to admit or deny
27 the remaining allegations contained in said paragraph, and on that basis, denies
28 both generally and specifically the allegations contained in said paragraph.

ATTORNEYS AT LAW

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GENERAL ALLEGATIONS

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1 contained in said paragraph.

2 **COUNT ONE: VIOLATION OF CA LABOR CODE SECTION § 510**

3 **FAILURE TO PROPERLY PAY OVERTIME WAGES**

4 13. Answering paragraph 13 of the Complaint, Defendant makes
5 reference to all of its prior answers to each and every paragraph incorporated by
6 reference in paragraph 13 of the Complaint, and by this reference incorporates the
7 same herein as though set forth in full.

8 14. Answering paragraph 14 of the Complaint, Defendant alleges that
9 Labor Code § 501 [sic] speaks for itself and is the best evidence of its contents.
10 Except as expressly alleged herein, Defendant lacks sufficient information and
11 belief to admit or deny the remaining allegations contained in said paragraph, and
12 on that basis, denies both generally and specifically the allegations contained in
13 said paragraph.

14 15. Answering paragraph 15 of the Complaint, Defendant denies both
15 generally and specifically the allegations contained in said paragraph.

16 16. Answering paragraph 16 of the Complaint, Defendant alleges that
17 Labor Code § 1194 speaks for itself and is the best evidence of its contents.
18 Except as expressly alleged herein, Defendant lacks sufficient information and
19 belief to admit or deny the remaining allegations contained in said paragraph, and
20 on that basis, denies both generally and specifically the allegations contained in
21 said paragraph.

22 17. Answering paragraph 17 of the Complaint, Defendant denies both
23 generally and specifically the allegations contained in said paragraph.

24 18. Answering paragraph 18 of the Complaint, Defendant denies that it
25 owes Plaintiffs any unpaid wages. Except as expressly alleged herein, Defendant
26 lacks sufficient information and belief to admit or deny the remaining allegations
27 contained in said paragraph, and on that basis, denies both generally and
28 specifically the allegations contained in said paragraph.

1 19. Answering paragraph 19 of the Complaint, Defendant alleges that
 2 Labor Code §§ 510 and 1194 speak for themselves and are the best evidence of
 3 their respective contents. Except as expressly alleged herein, Defendant denies
 4 both generally and specifically the allegations contained in said paragraph.

5 20. Answering paragraph 20 of the Complaint, Defendant alleges that
 6 Labor Code § 1194 speaks for itself and is the best evidence of its contents.
 7 Defendant further denies that Plaintiffs are entitled to attorneys' fees and/or costs
 8 in this action. Except as expressly alleged herein, Defendant lacks sufficient
 9 information and belief to admit or deny the remaining allegations contained in said
 10 paragraph, and on that basis, denies both generally and specifically the allegations
 11 contained in said paragraph.

12 **COUNT TWO: VIOLATION OF THE FAIR LABOR STANDARDS ACT**
 13 **FAILURE TO PROPERLY PAY OVERTIME WAGES**

14 21. Answering paragraph 21 of the Complaint, Defendant makes
 15 reference to all of its prior answers to each and every paragraph incorporated by
 16 reference in paragraph 21 of the Complaint, and by this reference incorporates the
 17 same herein as though set forth in full.

18 22. Answering paragraph 22 of the Complaint, Defendant alleges that the
 19 provisions of the Fair Labor Standards Act of 1938 ("FLSA"), 29 U.S.C. § 201, et
 20 seq., speak for themselves and are the best evidence of their respective contents.
 21 Except as expressly alleged herein, Defendant lacks sufficient information and
 22 belief to admit or deny the remaining allegations contained in said paragraph, and
 23 on that basis, denies both generally and specifically the allegations contained in
 24 said paragraph.

25 23. Answering paragraph 23 of the Complaint, Defendant alleges that 29
 26 U.S.C. § 207, speaks for itself and is the best evidence of its contents. Except as
 27 expressly alleged herein, Defendant lacks sufficient information and belief to
 28 admit or deny the remaining allegations contained in said paragraph, and on that

1 basis, denies both generally and specifically the allegations contained in said
2 paragraph.

3 24. Answering paragraph 24 of the Complaint, Defendant denies that
4 Plaintiffs regularly worked in excess of forty hours per week or that it owes
5 Plaintiffs any alleged unpaid wages. Except as expressly alleged herein,
6 Defendant lacks sufficient information and belief to admit or deny the remaining
7 allegations contained in said paragraph, and on that basis, denies both generally
8 and specifically the allegations contained in said paragraph.

9 25. Answering paragraph 25 of the Complaint, Defendant denies both
10 generally and specifically the allegations contained in said paragraph.

11 26. Answering paragraph 26 of the Complaint, Defendant denies both
12 generally and specifically the allegations contained in said paragraph.

13 27. Answering paragraph 27 of the Complaint, Defendant alleges that 29
14 U.S.C. § 216(b), speaks for itself and is the best evidence of its contents. Except
15 as expressly alleged herein, Defendant denies both generally and specifically the
16 allegations contained in said paragraph.

17 28. Answering paragraph 28 of the Complaint, Defendant denies both
18 generally and specifically the allegations contained in said paragraph.

19 29. Answering paragraph 29 of the Complaint, Defendant alleges that 29
20 U.S.C. § 216(b), speaks for itself and is the best evidence of its contents. Except
21 as expressly alleged herein, Defendant denies both generally and specifically the
22 allegations contained in said paragraph.

23 **COUNT THREE: VIOLATION [SIC] OF CA LABOR**

24 **CODE SECTION 201**

25 **FAILURE TO PAY WAGES DUE AND "WAITING TIME" PENALTIES**

26 30. Answering paragraph 30 of the Complaint, Defendant makes
27 reference to all of its prior answers to each and every paragraph incorporated by
28 reference in paragraph 30 of the Complaint, and by this reference incorporates the

1 same herein as though set forth in full.

2 31. Answering paragraph 31 of the Complaint, Defendant denies both
3 generally and specifically the allegations contained in said paragraph.

4 32. Answering paragraph 32 of the Complaint, Defendant alleges that
5 Labor Code §§ 201 and 203, speak for themselves and are the best evidence of
6 their respective contents. Except as expressly alleged herein, Defendant denies
7 both generally and specifically the allegations contained in said paragraph.

8 33. Answering paragraph 33 of the Complaint, Defendant denies both
9 generally and specifically the allegations contained in said paragraph.

10 34. Answering paragraph 34 of the Complaint, Defendant alleges that
11 Labor Code § 218.5 speaks for itself and is the best evidence of its contents.
12 Except as expressly alleged herein, Defendant denies both generally and
13 specifically the allegations contained in said paragraph.

14 35. Answering paragraph 35 of the Complaint, Defendant alleges that
15 Labor Code § 218.6 speaks for itself and is the best evidence of its contents.
16 Defendant further denies that Plaintiffs are owed any alleged unpaid wages and
17 therefore denies that Plaintiffs are entitled to an award of interest. Except as
18 expressly alleged herein, Defendant lacks sufficient information and belief to
19 admit or deny the remaining allegations contained in said paragraph, and on that
20 basis, denies both generally and specifically the allegations contained in said
21 paragraph.

22 **COUNT FOUR: VIOLATION OF CA BUSINESS AND PROFESSIONS**

23 **CODE § 17200 UNFAIR BUSINESS PRACTICES**

24 36. Answering paragraph 36 of the Complaint, Defendant makes
25 reference to all of its prior answers to each and every paragraph incorporated by
26 reference in paragraph 36 of the Complaint, and by this reference incorporates the
27 same herein as though set forth in full.

28 37. Answering paragraph 37 of the Complaint, Defendant alleges that the

1 Labor Code and Wage Orders speak for themselves and are the best evidence of
2 their respective contents. Except as expressly alleged herein, Defendant lacks
3 sufficient information and belief to admit or deny the remaining allegations
4 contained in said paragraph, and on that basis, denies both generally and
5 specifically the allegations contained in said paragraph.

6 38. Answering paragraph 38 of the Complaint, Defendant alleges that the
7 California Unfair Trade Practices Act (California Business and Professions Code §
8 17000, et seq.), speak for themselves and are the best evidence of their respective
9 contents. Defendant further denies that it owes Plaintiffs any alleged unpaid
10 wages. Except as expressly alleged herein, Defendant lacks sufficient information
11 and belief to admit or deny the remaining allegations contained in said paragraph,
12 and on that basis, denies both generally and specifically the allegations contained
13 in said paragraph.

14 39. Answering paragraph 39 of the Complaint, Defendant denies both
15 generally and specifically the allegations contained in said paragraph.

16 40. Answering paragraph 40 of the Complaint, Defendant alleges that the
17 California Unfair Trade Practices Act (California Business and Professions Code §
18 17000, et seq.), speak for themselves and are the best evidence of their respective
19 contents. Except as expressly alleged herein, Defendant denies both generally and
20 specifically the allegations contained in said paragraph.

21 41. Answering paragraph 41 of the Complaint, Defendant denies both
22 generally and specifically the allegations contained in said paragraph.

23 42. Answering paragraph 42 of the Complaint, Defendant denies that it
24 owes Plaintiffs any alleged unpaid wages. Except as expressly alleged herein,
25 Defendant lacks sufficient information and belief to admit or deny the remaining
26 allegations contained in said paragraph, and on that basis, denies both generally
27 and specifically the allegations contained in said paragraph.

28 43. Answering paragraph 43 of the Complaint, Defendant alleges that

1 California Business and Professions Code § 17203, speaks for itself and is the best
 2 evidence of its contents. Except as expressly alleged herein, Defendant lacks
 3 sufficient information and belief to admit or deny the remaining allegations
 4 contained in said paragraph, and on that basis, denies both generally and
 5 specifically the allegations contained in said paragraph.

6 **COUNT FIVE: VIOLATION OF CALIFORNIA LABOR CODE § 226**

7 **INADEQUATE PAY STATEMENTS**

8 44. Answering paragraph 44 of the Complaint, Defendant makes
 9 reference to all of its prior answers to each and every paragraph incorporated by
 10 reference in paragraph 44 of the Complaint, and by this reference incorporates the
 11 same herein as though set forth in full.

12 45. Answering paragraph 45 of the Complaint, Defendant alleges that
 13 California Labor Code § 226, speaks for itself and is the best evidence of its
 14 contents. Except as expressly alleged herein, Defendant lacks sufficient
 15 information and belief to admit or deny the remaining allegations contained in said
 16 paragraph, and on that basis, denies both generally and specifically the allegations
 17 contained in said paragraph.

18 46. Answering paragraph 46 of the Complaint, Defendant alleges that
 19 California Labor Code § 226, speaks for itself and is the best evidence of its
 20 contents. Except as expressly alleged herein, Defendant lacks sufficient
 21 information and belief to admit or deny the remaining allegations contained in said
 22 paragraph, and on that basis, denies both generally and specifically the allegations
 23 contained in said paragraph.

24 47. Answering paragraph 47 of the Complaint, Defendant denies both
 25 generally and specifically the allegations contained in said paragraph.

26 48. Answering paragraph 48 of the Complaint, Defendant denies both
 27 generally and specifically the allegations contained in said paragraph.

28 49. Answering paragraph 49 of the Complaint, Defendant denies both

generally and specifically the allegations contained in said paragraph.

50. Answering paragraph 50 of the Complaint, Defendant denies both generally and specifically the allegations contained in said paragraph.

51. Answering paragraph 51 the Complaint, Defendant alleges that Labor Code § 226eaks for itself and is the best evidence of its contents. Defendant further denies that Plaintiffs are entitled to attorneys' fees and/or costs in this action. Except as expressly alleged herein, Defendant lacks sufficient information and belief to admit or deny the remaining allegations contained in said paragraph, and on that basis, denies both generally and specifically the allegations contained in said paragraph.

AFFIRMATIVE DEFENSES

Defendant is informed and believes and based thereon alleges as follows:

FIRST AFFIRMATIVE DEFENSE

1. The Complaint, and each of its purported claims for relief, fails to state facts sufficient to constitute a claim for relief against Defendant.

SECOND AFFIRMATIVE DEFENSE

2. The Court lacks jurisdiction over the claims alleged in the Complaint or some of the claims alleged in the Complaint.

THIRD AFFIRMATIVE DEFENSE

3. Plaintiffs' claims are barred by the doctrines of exhaustion, abstention and/or primary jurisdiction in that Plaintiffs have not exhausted their available administrative remedies.

FOURTH AFFIRMATIVE DEFENSE

4. To each claim for relief in the Complaint, Defendant alleges that recovery thereon is barred or diminished by reason of Plaintiffs' failure to mitigate their alleged damages.

FIFTH AFFIRMATIVE DEFENSE

5. Plaintiffs' claims for "waiting time" penalties under Labor Code §§

201-203 are barred because Defendant had a good faith belief that no such wages were owed and that all wages were properly paid.

SIXTH AFFIRMATIVE DEFENSE

6. Plaintiffs' claims for "waiting time" penalties under Labor Code §§ 201-203 must fail because Defendant has not "willfully failed" to pay wages to Plaintiff.

SEVENTH AFFIRMATIVE DEFENSE

7. Plaintiffs' claim for penalties under Labor Code § 226 is barred because Defendant did not "knowingly and intentionally" fail to comply with its requirements.

EIGHTH AFFIRMATIVE DEFENSE

8. Plaintiffs lack standing to assert any of the claims in their Complaint.

NINTH AFFIRMATIVE DEFENSE

9. The claims alleged in the Complaint against Defendant are barred in that Plaintiffs ratified by their conduct that all wages due were paid.

TENTH AFFIRMATIVE DEFENSE

10. Plaintiffs' actions constitute a total release and waiver of any and all claims which may have existed against Defendant.

ELEVENTH AFFIRMATIVE DEFENSE

11. Plaintiffs, by reason of their acts, omissions, representations and courses of conduct by which Defendant was led to rely to its detriment, are barred from any recovery herein by virtue of the doctrine of estoppel.

TWELFTH AFFIRMATIVE DEFENSE

12. Plaintiffs, by reason of their acts, omissions, representations and courses of conduct which indicate a waiver of any claims against Defendant, is barred from any recovery herein by the doctrine of waiver.

THIRTEENTH AFFIRMATIVE DEFENSE

13. If any equitable relief is claimed to be owed to the Plaintiffs as a

1 result of the Complaint on file herein, it is barred as a result of the doctrine of
2 laches.

3 **FOURTEENTH AFFIRMATIVE DEFENSE**

4 14. Plaintiffs would be unjustly enriched if they recovered any sums
5 alleged in their Complaint.

6 **FIFTEENTH AFFIRMATIVE DEFENSE**

7 15. The obligations set forth in Plaintiffs' Complaint were fully
8 discharged by Defendant's payment to Plaintiffs of all wages due and were
9 accepted by Plaintiffs in full payment of the obligation.

10 **SIXTEENTH AFFIRMATIVE DEFENSE**

11 16. The Complaint and each and every claim for relief alleged therein is
12 barred by all applicable statutes of limitation, including, but by no means limited
13 to CCP §§ 337-343 and/or Business and Professions Code § 17208.

14 **SEVENTEENTH AFFIRMATIVE DEFENSE**

15 17. Should Plaintiffs recover damages from Defendant, Defendant is
16 entitled to indemnification in whole or in part from all persons or entities whose
17 conduct and/or fault proximately contributed to Plaintiffs' damages, if any.

18 **EIGHTEENTH AFFIRMATIVE DEFENSE**

19 18. Defendant is informed, believes, and on that basis alleges that
20 Plaintiffs agreed to accept and did in fact accept something different or less than
21 that to which they claimed they were entitled to and thereby extinguished their
22 original claim. Such conduct bars them from any recovery herein under the
23 doctrine of release, accord, satisfaction, ratification, and/or novation.

24 **NINETEENTH AFFIRMATIVE DEFENSE**

25 19. If Plaintiffs suffered or sustained any damage or injury, either as
26 alleged in the Complaint or at all, the same was directly and proximately attributed
27 to by the negligence, fraud, recklessness, carelessness, fault and unlawful conduct
28 of Plaintiffs, and damages of Plaintiffs, if any, shall be reduced in proportion to

1 the amount of negligence and/or fault attributed to Plaintiffs.

2 **TWENTIETH AFFIRMATIVE DEFENSE**

3 20. If Plaintiffs suffered or sustained any damage or injury, either as
4 alleged in the Complaint or at all, the same was directly and proximately attributed
5 to by the negligence, fraud, recklessness, carelessness, fault and unlawful conduct
6 of other parties or entities, whether or not parties to this action, and damages to
7 Plaintiffs, if any, shall be reduced in proportion to the amount of negligence and/or
8 fault attributed to such other parties or entities, whether or not parties to this
9 action.

10 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

11 21. Defendant alleges that the actions of Plaintiffs in concealing their
12 claim and not requesting or indicating additional hours were worked and wages
13 were owed during their employment are guilty of laches which precludes Plaintiffs
14 from pursuing this action under the doctrine of laches and estoppel.

15 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

16 22. Defendant is informed and believes and thereon alleges that some or
17 all of Plaintiffs' claims have been satisfied or released.

18 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

19 23. Plaintiffs' action is barred since Defendant relied in good faith in
20 conformity with and in reliance upon written guidelines, interpretations, and rules
21 promulgated by the DLSE, Industrial Welfare Commission ("IWC"), United States
22 Department of Labor ("DOL"), and upon the administrative practice and
23 enforcement policies of the DLSE, IWC and DOL.

24 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

25 24. If Plaintiffs suffered any injury or damage, any alleged violation of
26 California rules and regulations regarding minimum wage, record-keeping, and/or
27 overtime requirements was made in good faith and Defendant had a reasonable
28 ground for believing it was in compliance with the law.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

25. Defendant has not willfully or intentionally failed or refused to pay any sum owing to Plaintiffs.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

26. If it is determined that Defendant failed to perform one or more of its obligations under any contract or agreement described in the Complaint, performance of each obligation was excused due to impossibility or impracticability in each instance.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

27. Defendant alleges that as between Plaintiffs and Defendant, the equities do not preponderate in favor of Plaintiffs, and accordingly, Plaintiffs are barred from any recovery herein.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

28. Defendant's business practice of paying its employees is not "unlawful" or "unfair" within the meaning of Business and Professions Code § 17200 in that Defendant complied with all applicable statutes and regulations.

TWENTY-NINTH AFFIRMATIVE DEFENSE

29. To the extent that Plaintiffs allege that one or more of Defendant's employees committed any unlawful act or omission, any such act or omission outside course and scope of employment; (2) was not condoned by this answering Defendant; (3) was undertaken without the knowledge or consent of this answering Defendant; and (4) was not the conduct of a class-based nature.

THIRTIETH AFFIRMATIVE DEFENSE

30. Defendant overpaid Plaintiffs, and therefore would be entitled to offset by the amount of any overpayment of any sums that might be awarded in the above-entitled action to Plaintiffs.

THIRTY-FIRST AFFIRMATIVE DEFENSE

31. Plaintiffs' claims for liquidated damages under the federal Fair Labor

Standards Act ("FLSA") are barred because California laws and regulations regarding such penalties violate provisions of the United States Constitution and of the California Constitution, place an unreasonable burden on interstate commerce, and constitute unequal protection and denial of due process.

THIRTY-SECOND AFFIRMATIVE DEFENSE

32. The Complaint and each of its claims for relief is frivolous as to Defendant and Defendant is entitled to recover attorney's fees incurred in defending this action pursuant to CCP § 128.5, and other applicable laws.

THIRTY-THIRD AFFIRMATIVE DEFENSE

33. Defendant presently has insufficient knowledge or information on which to form a belief as to whether Defendant may have additional, as yet, unstated affirmative defenses available. Defendant reserves herein the right to assert additional defenses in the event that discovery and/or further investigation or research indicates that it would be appropriate.

WHEREFORE, Defendant prays for judgment against Plaintiffs as follows:

1. That Plaintiffs take nothing by their Complaint;
2. That the Complaint be dismissed in its entirety with prejudice;
3. For costs of suit incurred herein;
4. For reasonable attorneys' fees, including but not limited to fees mandated under Labor Code § 218.5; and

1 5. For such other and further relief as the Court may deem just and
2 proper.

3 DATED: July 8, 2008

4 ATKINSON, ANDELSON, LOYA, RUUD &
5 ROMO

6 By: 

7 Steven D. Atkinson
8 Mark T. Palin
9 Christopher S. Milligan
10 Attorneys for Defendants CBC
11 FRAMING, INC. and JOHN VOJTECH

12 **DEMAND FOR JURY TRIAL**

13 Defendant demands a jury trial in this action.

14 DATED: July 8, 2008

15 ATKINSON, ANDELSON, LOYA, RUUD &
16 ROMO

17 By: 

18 Steven D. Atkinson
19 Mark T. Palin
20 Christopher S. Milligan
21 Attorneys for Defendants CBC
22 FRAMING, INC. and JOHN VOJTECH
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